



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

Office of General Counsel  
20<sup>th</sup> Floor, L & C Tower  
401 Church Street  
Nashville, Tennessee 37243-1548  
Telephone: (615) 741-1440

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Mr. Michael Hines  
Mr. Adam Smith  
Southeast Environmental Engineering  
1920 Breezy Ridge Trail  
Concord, TN 37922

Mr. Bob Pickney  
Adenus Wastewater Solutions  
849 Aviation Parkway  
Smyrna, TN 37167

**RE: Classification of Drip Fields and the Agreed Order of September 2007**

Gentlemen:

There appears to be some uncertainty regarding the application of the September 2007 Agreed Order with Tennessee Wastewater to drip fields/sites not specifically named in the Agreed Order. This office and the WPC Division have been aware of this uncertainty, and we have wrestled with it ourselves. After extensive review, OGC has determined that the Agreed Order is only binding on TDEC and Tennessee Wastewater for the nine permits referenced in the Order. The Agreed Order does not have the effect or authority of a rule; it does not bind either party to that classification scheme in permit modifications, or new permits.

OGC and WPC are aware that several of the action items in the Order were not timely completed as required by the Order; specifically, Item 3 of Section VI of the Order. Failure to fence or disinfect at all nine sites within 45 days of the Order was technically, a violation and default of the Order. But we understand that all of the required work has now been completed, and we do not intend to address the delays in compliance.

Furthermore, TWS and the Division were to discuss and agree within 45 days of approval of the Agreed Order on the appropriate drip field access classifications *for the permits* under appeal in

that matter. This was not timely accomplished as required by the Order, but they were resolved eventually—and now the issue of *subjectivity* has begun to arise in classifying the fields.

On the other hand, OGC is aware that Tennessee Wastewater has likewise considered the Division was *not* following or applying the terms of the Agreed Order to TWS sites not listed in the Agreed Order. Adam Smith this past week told me that your company had not been properly informed, if at all, regarding the Division's stance on the future application of the Agreed Order, and that TWS was under the impression the classification scheme was applicable to most, if not all, of their sites.

Legally, the Agreed Order applies specifically to 9 permits. When TWS appeals or requests modification of other permits, looking to get similar limits referenced in the Agreed Order, we all know that does not relieve TWS of the responsibility to comply with the issued/current permit until the modification is issued. A request for modification does not guarantee the Agreed Order limits will apply. It is *incorrect* to assume the Agreed Order formula(s) not only will apply but already apply, everywhere, even when a modified permit has not been issued.

The Department is forced to regard the Agreed Order as a first attempt by both parties to arrive at some kind of procedure for identifying various kinds of drip fields and various degrees of access and how to protect the public and environment and the system itself. It is binding only on the nine listed sites. If we all agreed it was successful in accomplishing its goals, it could have become permanent policy for all sites. But this is not how it turned out, and in fact we have found that the Agreed Order formula of classifying systems is lacking, too subjective; its application needs to be revisited. It just has not worked out as we had hoped and planned. We wanted you to be informed of this determination as soon as possible, and I should have done so sooner. That was my responsibility.

However, we have not discarded the Agreed Order classification system entirely. We considered condensing and redefining into three distinct categories; we initiated an "either/or" option for fencing or disinfection on future modifications and renewals; and we have also decided to use the Agreed Order classification system as *guidance* in the future. The "either/or" provision may render the Order moot in the long run; the Division and TWS may discover that some of the renewals/modifications/new sites fit into the system anyway; the Division and TWS may both agree that a particular site should be classified in a certain way.

The point of this letter was to formally inform you that neither the Department nor Tennessee Wastewater, for that matter, is bound by the Agreed Order except for the nine sites listed in the Order. Most, if not all, of future permits/modifications/renewals will contain the "either/or" option, and some must by necessity be dealt with on a case-by-case basis. As always, we request and expect your opinion on how you prefer to protect/disinfect and/or fence the drip fields—and the local field office will still need to perform their own evaluation as soon as possible. Permitting will still make the final decision, but their determination shall remain subject to any regulatory or statutory rights of appeal.

The Division wishes to attain and preserve a respectful and productive working relationship with your company. We all realize this has not always been the case for a variety of reasons. OGC has agreed to work with the Division, TWS and your attorney(s) to facilitate better communication between both parties—and this issue about the Agreed Order was a good place to

start. OGC and the Division are quite aware there are other concerns that need to be resolved in the near future; we are also working to that end.

If you and/or your attorney have any questions or comments about this, please don't hesitate to send them to me or the Division anytime. We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Henry". The signature is fluid and cursive, with the first name "David" being the most prominent.

David L. Henry  
Assistant General Counsel

CC: Paul E. Davis: Director, WPC  
Robert O'Dette: Nashville WPC  
Vojin Janjic: Nashville WPC  
Saya Qualls: Nashville WPC  
John West: Knoxville WPC  
Ann Rochelle: NEFO/WPC  
Wade Murphy: Nashville WPC  
Hari Akunuri: Nashville WPC